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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. 20

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

Brief on Behalf of Resp[illegible]s.

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Counsel for Respondents.

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Respondents.

Brief on Behalf of Respondents.

To the Honorable Charles Evans Hughes, Chief Justice and the Associate Justices of the Supreme Court of the United States:

The respondents accept the nomenclature adopted by the petitioners. We shall refer to ourselves as plaintiffs, as in the trial court, and to our opponents as defendants.

OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 359-378) is reported in 108 F. (2d) 436-448. No opinion was written by the United States District Court for the Northern District of Illinois; findings of fact and conclusions of law were made by the District Court (R. 247-251).

INTRODUCTORY.

The plaintiffs, in order not to be compelled to repeat the "Statement of Facts and Issues Involved" adopt the same as it appears at pages one to six of their "Brief in Opposition to Petition for Writ of Certiorari" heretofore filed herein.

The defendants under the title of "Preliminary" on pages two to four of their brief, in the portion of the brief usually devoted to a presentation of the facts as provided by the rules of this Court, advance various arguments and make reference to various text and other treatments of labor problems. The plaintiffs feel that these contentions and references are correctly part of the "argument" and will give their answer to these points in that part of this brief. These texts and legal periodical treatments are in the main about ten years old, and at that date charted unexplored seas. Since then most of the questions there posed have been decided by legislative enactment or judicial determination.

THE FACTS.

The plaintiffs are a dairy maintaining a pasteurizing plant in the city of Chicago, Illinois, a milk producers' co-operative of the State of Wisconsin, and a labor union affiliated with the Committee for Industrial Organization. The plaintiff dairy belongs to that small group of six or

eight Chicago dairies distributing their products by the cash and carry method of distribution through cut-rate milk stores. The milk is received in Wisconsin by the producers' cooperative and is daily shipped by tank trucks to the plaintiff dairy where it is immediately pasteurized and sold to independent distributors who deliver such product at wholesale to approximately four hundred retail stores (District Court finding: "Third", R. 248). The distributors are referred to as "vendors". The plaintiff union is an industrial union, and has organized the plaintiff dairy. The vendors are members of the plaintiff union (R. 295).

The defendant union is a *craft* union representing milk wagon drivers who are *employees* of the Chicago dairies, except the small group of cash and carry dairies which distribute milk to cut-rate stores (R. 109). The dairies employing members of the defendant union are not cash and carry dairies. These other dairies deliver their products in small units (one or two bottle average) to the doorstep of the ultimate consumer at higher prices than obtain for the sale of cash and carry milk. The individual defendants are officers and agents of the defendant union.

The record of the evidence further shows that until about five years before the filing of the case, there was no cash and carry cut-rate distribution of milk in the city of Chicago (R. 65).

The plaintiffs have maintained that the Master in Chancery and the District Court did not find the facts against the plaintiffs. The plaintiffs urge that the facts as found by the District Court, if interpreted in the light of correctly applicable legal principles, would compel a decision in their favor. The District Court made the following, among other findings:

> Ninth: The Plaintiff, Lake Valley Farm Products, Inc., is a cut-rate dairy in that it distributes its milk

through retail stores at cash and carry sale at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home.

Tenth: Because of the relatively large amount of milk delivered to each retail store by the plaintiff dairy, the cost of delivery is substantially less than the cost of delivering milk on a retail route to the doorstep of the ultimate consumer.

Eleventh: That the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and that stores selling plaintiff dairy's products, have had windows smashed, have been bombed, set afire, stench bombs thrown and have been submitted to other acts of violence; that cut-rate dairy plants have been bombed and have had machinery smashed and subjected to other acts of violence; that delivery trucks of cut-rate dairies have been kidnapped and destroyed, and other acts of violence committed (R. 249).

Paragraph 44 of the Master's Report (R. 222), is as follows:

It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or

other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.

The findings of the District Court are based upon the record showing that an average of twelve hundred pounds of milk can be delivered daily by making ten to twelve stops over a period of three to five hours on a cash and carry route, rather than a daily average of about two hundred thirty points requiring more than one hundred stops over a period of seven or eight hours on a retail route of the defendant union (R. 71, 73, 89, 92, 93, 96, etc.).

The opinion of the Circuit Court of Appeals found (R. 369-370), and the plaintiffs urge, that the conclusions of law reached by the District Court are inconsistent with the findings of fact.

Errors in Defendants' Statement As To the Facts.

At pages five to seven of their brief, the defendants make numerous observations under the heading: "Facts Overlooked by Plaintiffs." Since these observations contradict the record, the plaintiffs are compelled to correct these references.

The statement on page five that the vendors earn less than drivers, or that their working conditions are unfavorable contradicts the record and the findings of the District Court, that it is the method of *large volume store sales* and fewer required stops and not the matter of pay that determines (R. 249).

The references to R. 300, 337 and 338 made by the defendants, appear to have no application whatsoever to the

question of income. (That the vendors actually have higher incomes and better conditions please see R. 67, 68, 73 and 74, etc., and District Court Findings Nos. "Ninth" to "Twelfth," R. 249.)

The statement that the vendors perform "milk wagon delivery service" is incorrect, as shown by the record. The vendors deliver to cash and carry stores, make only ten or twelve stops, and distribute on an average of twelve hundred bottles. The defendant union retail drivers deliver to consumers' homes and make on an average of over one hundred stops delivering an average of two hundred thirty bottles. The District Court found that it was the very difference in these two methods of distribution that made possible the cut-rate price.

The Wagner Dairy referred to at the top of page six of defendants' brief was offered membership in the defendant union only if it would cease selling cut-rate milk (R. 120).

The statement that Lake Valley Farm Products had been approached by the defendant union to sign a contract is unqualifiedly incorrect. The record shows that the Lakeview Dairy, a predecessor company then *employing* drivers, had been denied membership in the defendant union because it was a cut-rate dairy (R. 125). Perhaps by inadvertence the several page references to the record at this point fail to disclose a single word dealing with any effort to organize.

The statement that all dairies, except one, sell cut-rate milk is inserted to mislead this Court into believing that there is no distinction between dairies distributing by means of the cash and carry store method and those distributing by the defendant union. No such evidence appears in the record; the officials of the defendant union testified that there are only a half-dozen cash and carry

dairies and the District Court so found (Finding Ninth, R. 249, also testimony of defendant Bryant, R. 107 and 108).

The defendant C.I.O. union is not in competition with the defendant union. The defendant union would not accept vendors of the plaintiff dairy and could not under their by-laws or contract (R. 107, 109, 112, Exhibit 2; R. 147-154). The plaintiff union accepted members only from dairies selling by the cash and carry methods and unacceptable to the defendant union (R. 84).

CONFLICTING CONTENTIONS AND CONTROVERTED ISSUES.

It is the plaintiffs' contention that the findings of fact of the District Court based upon the record show, if proper conclusions of law are drawn thereon, that the acts of the defendants violate the Sherman Anti-Trust Law as a combination and conspiracy to control and dictate marketing and distribution methods, control price, to prevent persons from engaging in the milk business in Chicago, Illinois, except upon dictated conditions, and to effect and perpetuate a monopoly in direct restraint of interstate commerce. Further that the acts of violence, boycott, picketing and all other acts committed were frequently intermingled and inseparable, and in any case are enjoinable as all were merely part of the means and technique employed to carry out an illegal conspiracy and achieve an illegal end.

The defendants contend that their acts are permissible; that their purpose is only to unionize an industry and as such is granted immunity under the Norris-La Guardia Act.

SUMMARY OF ARGUMENT.

I.

The defendants' activities constitute a violation of the Sherman Anti-Trust Act.

A.

The activities of the defendants are directed at the control of price, suppression of competition in marketing methods, and the prevention of persons engaging in business enterprise, except upon terms dictated by the defendants, and are *per se* in restraint of trade.

B.

The activities of the defendants directly restrain interstate commerce according to the standards applicable in Anti-Trust cases.

II.

No labor dispute as defined by the terms of the Norris-La Guardia Act is present.

A.

The record fails to show the existence of a bona fide dispute concerning terms or conditions of employment, but on the contrary show that the purposes and ends to be accomplished by the defendants are wholly outside of the area of permissible labor activity.

B.

Efforts to control price and marketing methods can not constitute a labor dispute.

III.

The right to freedom of speech does not grant immunity to picketing done pursuant to a purpose not within the permissible area of labor activities.

IV.

Unless protected by injunction restraining the defendants from preventing the sale of cash and carry milk and preventing the distribution of milk by the "vendor system", the plaintiffs will be denied the equal protection of the law and other privileges and immunities guaranteed to them under the Constitution of the United States.

ARGUMENT.

I.

DEFENDANTS' ACTIVITIES CONSTITUTE A VIOLATION OF THE SHERMAN ANTI-TRUST ACT BY THE PRINCIPLES DETERMINED BY THE CASE OF APEX HOSIERY CO. v. LEADER, 84 L. ed. 913.

A.

The defendants' activities are per se an unreasonable restraint.

The plaintiffs urge that the record shows defendants' acts fall within those activities condemned by the principles of the case of *Apex Hosiery* v. *Leader*, 84 L. ed. 913. That case while holding labor unions not exempt under the anti-trust laws, defines the nature and extent of applicability, and exempts normal and legitimate union activities. The plaintiffs confine their arguments to the very special facts which distinguish this case from the facts present in the *Apex* case. In that case although the acts were unlawful, they did not contain the elements of restraint of trade. Plaintiffs will argue that the defendants' acts were essentially of restraint; were directed at "suppression of competition in the marketing methods", the control of price, and the prevention of persons engaging in business enterprise except upon terms dictated by the defendants. Specifically that the defendants' program was to prevent persons from distributing milk in the City of Chicago by sale in cash and carry stores, and to prevent the sale of milk at any price lower than that prevailing for milk delivered to the doorstep of the retail consumer.

The plaintiffs do not argue, as the defendants would have this Court believe, that efforts to organize an entire industry, or efforts to increase wages or benefit workers which in turn may *incidently* raise the consumers' price, is a violation of the Sherman Act. Such arguments were never considered or presented by the plaintiffs, and were injected into the case now for the first time by the defendants.

The defendants by using accepted and not to be controverted legal generalities, such as that of the protection afforded to the legitimate efforts of labor unions to organize under the Norris-LaGuardia Act, the sanctity of the right to free speech, and the like, seek an easy classification of their activities under headings which would make the position of the plaintiffs appear to be an attack upon these broad principles. Nothing could be further from the actual case. The record presents no such simple set of facts as would permit the defendants' acts to fall within these broad and unquestioned principles. The plaintiffs feel that the facts shown by the record present a case upon the facts, quite different from those cases held to involve a "labor dispute" as determined by this Court in *Lauf* v. *Schinner & Co.*, 303 U. S. 323; *Senn* v. *Tile Layers' Union*, 301 U. S. 468, and *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552.

Control of Price and Not Unionization Is Defendants' Real Purpose.

The findings of the District Court indicate the unusual nature of the facts present. The District Court in its findings of fact made all of the findings necessary to show that the real purpose of the defendants was to prevent the sale of cut-rate milk. Nowhere does the District Court, or even the Master in Chancery in his very lengthy report, find any actual issue concerning wages, hours, terms

or conditions of employment, or questions of representation.

The District Court specifically found that the plaintiff dairy by employing the cash and carry method of distribution, was able to sell its milk at lower prices; (please see statement of facts herein) that the picketing and violence has taken place only at the independently owned retail stores selling the products of the plaintiff dairy; that the defendant union represents all men distributing milk in Chicago except those of the few cut-rate dairies (R. 249). The defendants' witnesses testified that they were opposed to the *vendor system of distribution* and some admitted opposition to the sale of cut-rate milk (R. 103-105, 112, 91, 92, 94, 95, 98, 99, 100). Neither the Master nor the District Court made any specific finding of fact indicating that the activities of the defendants were in an effort to organize.

From the premises that it is a normal union activity to organize an entire industry, the defendants further argue that efforts to better working conditions, even if consumers' prices are raised, is not a violation of the Sherman Act. Plaintiffs agree with these arguments, but these premises are purely hypothetical and do not find their basis in any facts in the record of this case. Here there are no efforts to organize an entire industry, but rather the positive refusal of the defendant union to accept dairies which distribute cut-rate milk (R. 125). Despite their better working conditions, higher wages and better hours, and until represented by the plaintiff union, the vendors were afforded no collective representative. This is a case where a union stepped entirely out of the area of normal labor activities into *direct* efforts to control marketing, and regulate price. The defendants' statements as to the economic and social necessity for greater protection to the rights of labor unions can create no issue in this case.

The record shows a labor union which for almost forty years has represented all Chicago milk drivers and which to preserve and perpetuate its control, seeks to prevent the sale of cash and carry milk, which has been demonstrated to be a more modern, and efficient method of milk distribution. The defendants seek to weigh their personal self-interest against the right to more progressive marketing methods and in effect contend that they have the right to dictate the terms, methods, and conditions upon which persons may engage in the milk business. Such purposes are illegal, regardless of the class of the persons who seek to bring them about.

Apex Hosiery v. *Leader*, 84 L. ed. 913, 929.

United States of America v. *The Borden Co.*, 308 U. S. 188.

Interstate Circuit, Inc. v. *United States*, 306 U. S. 208.

Local 167, I. B. T. v. *United States*, 291 U. S. 293.

Bedford Cut Stone Co. v. *Stone Cutters' Association*, 274 U. S. 37.

Industrial Association v. *United States*, 268 U. S. 64.

United Leather Workers v. *Herkert*, 265 U. S. 457, 471.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Loewe v. *Lawlor*, 208 U. S. 274.

Montague & Co. v. *Lowry*, 193 U. S. 38.

Also please see Statement of Assistant Attorney General Thurman Arnold of November 20, 1939, entitled "Application of the Anti-Trust Laws to Labor Unions", wherein activities by labor unions outside the legitimate field of labor interest and partaking of efforts to control marketing methods are condemned.

Commerce Clearing House, Labor Law Service, Third Edition, Sec. 535.

Efforts by a labor union to suppress competition in marketing methods fall into the same classification of illegality as non-labor cases.

Apex Hosiery v. *Leader*, 84 L. ed. 913, 929, citing:
Montague v. *Lowry*, 193 U. S. 38.
Paramount Famous Lasky Co. v. *United States*, 282 U. S. 330.
United States v. *First National Pictures*, 282 U. S. 44.
Eastern States Lumber Dealers Ass'n. v. *United States*, 234 U. S. 600.

The defendants misinterpret the decision of the Circuit Court of Appeals in saying that unionization of all milk wagon drivers in the City of Chicago could *of itself* constitute a violation of the Sherman Act. The Circuit Court of Appeals inquired into the nature of the end to be accomplished and determined that the only interest of the defendants was to prevent the sale of cut-rate milk, and that there was no effort at unionization or no possibility of the same. After having so determined that Court held that the findings of the District Court and the record indicated that the elements of monopoly and restraint were present (R. 368).

The Ends Sought Must Justify the Means Employed.

Although much has been added to the substance of labor law both by legislation and judicial determination, since the cases of *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, and *Bedord Cut Stone Co.* v. *Journeymen Stone Cutters' Association*, 274 U. S. 37, as to the permissible area and extent of labor dispute, according to the present expressions of the law, the inquiry into the *nature* of the ends compelling labor union activities take on new and added importance. Since only certain and now clearly

efined types of extraordinary activities of unions appear
o violate the anti-trust laws the nature of the ends and
urposes of acts committed, require more consideration
han ever. Whether the majority or minority decisions
n these earlier cases is right as to whether the acts were
ermissible, as justified by the end sought, need not be
rgued. The principle transcending these cases is that
he Court must in all cases carefully inquire into the na-
ure of the purpose to determine if it is a purpose which
ay lawfully be indulged in by a labor union.

Apex Hosiery v. *Leader,* 84 L. ed. 913, 931.
Restatement of the Law of Torts, Section 775, page 98.
Frankfurter & Greene: "The Labor Injunction", page 25.

In all cases the thing to be guarded against is the pur-
ose *per se* illegal in the guise of a labor dispute. Iden-
ical acts, some, of themselves, lawful and others illegal,
ay be the instruments of effecting either a legitimate
r an unlawful purpose. In the *Apex* case, *supra,* this
ourt stated that the union's purpose was to organize the
actory. A strike of employees was involved and the pur-
oses were entirely lawful, and clearly without the field
f *per se* restraints of trade. The defendants here seek to
nject the question of hours, wages and working conditions
t page twenty-two of their brief, but since their object
s not unionization, these issues are not involved. Evi-
ence was not introduced by the defendants on these points,
nd the Master in Chancery and the District Court made
o findings, to support this contention. The statement
hat the members of the defendant union have bettered
heir working conditions since 1902 may be answered by
bserving that the conditions of all workers have been
ettered during that period. If the defendants are per-
nitted to prevent the sale of cash and carry milk, it is

conceivable that by preventing the millions of persons living in Chicago from obtaining milk at a low price, the defendant union may enjoy further benefits.

The Ends Sought By the Defendants Are Unlawful Per Se.

This case is not that of an effort to better working standards by unionization which might as an incident cause the sales' price of the commodity to increase. It is rather the direct effort of a union to control the distribution price of a commodity. The District Court found that the *method* of distribution was the justification for the lower sales price. The efforts of the defendant union to so control price must be considered by the same standards as the efforts of non-labor groups. Combinations to control price are *per se* illegal.

United States v. *Socony-Vacuum Oil Co.*, 84 L. ed. 760.

United States v. *Trenton Potteries*, 273 U. S. 392.

Interstate Circuit v. *United States*, 306 U. S. 208.

Although the determining standards of what is an illegal purpose, have varied with industrial and social progress, this Court has always held that if illegality of purpose is first shown, the resulting restraint is unlawful and relief may be had.

Apex Hosiery v. *Leader*, 84 L. ed. 913, at page 927, citing: *Local 167, I. B. T.* v. *United States*, 291, U. S. 293; *United States* v. *Brims*, 272 U. S. 549.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Eastern States Retail Lumber Dealers' Association v. *United States*, 234 U. S. 600.

Loewe v. *Lawlor*, 208 U. S. 274.

The Nature of the Defendants' Activities Prove An Unlawful Intent.

The defendants urge that the record does not indicate a specific intent on their part to violate the Sherman Act. If the acts of the defendants in the present case constitute a combination and conspiracy containing the elements of a restraint *per se,* and if the effect of such combination is to actually restrain the flow of commerce, no specific intent need be shown to have existed in the minds of the defendants to restrain Interstate Commerce. The defendants are charged with the intent to perform the natural consequences of their deliberate acts.

Apex Hosiery v. *Leader,* 84 L. ed. 913, 917.
Interstate Circuit v. *United States,* 306 U. S. 208.
United States v. *Brims,* 272 U. S. 549.
Eastern States Lumber Association v. *United States,* 234 U. S. 614.

All Means Used Are Rendered Unlawful by the Illegality of Purpose.

This Court has determined that where the purpose is first established to be unlawful that all means of accomplishing such purpose, even those otherwise innocent, are condemned. Although the question as to what constitutes an illegal purpose must first be determined according to varying standards of applicable legislation, and social and economic progress, if once established, all means fail with the purpose. Rights and guarantees are at all times limited to the paramount interests of society and the exigencies of the state as determined by its legislative policy. The claimed rights of the defendants may not be exercised by them in complete disregard of the purposes and uses to which they are put.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Gompers v. *Buck's Stove & Range Co.*, 221 U. S. 418.

Eastern States Retail Lumber Dealers' Association v. *United States*, 234 U. S. 522.

American Steel Foundries v. *Tri-City Trades Council*, 257 U. S. 184.

Scavenger Service Corporation v. *Courtney*, 85 F. (2d) 825.

Since all means of carrying out an illegal purpose may be enjoined, the question of the separability of lawful from unlawful means, raised by the defendants, should not be involved. Even if there were some basis in the cases, for the argument that lawful means, if separable from unlawful, are immune, the record shows that all means employed were but the interlocking techniques of one program. Picketing, bombing, burning, shooting, and the other means all dovetail into the plan of action concurrently imposed by the defendants. The plaintiffs feel, however, that even if the means used may be factually or legally separable, that if the purpose has all of the elements of a common law restraint and also burdens interstate commerce, that all means may be enjoined. Hereinafter under the subject of freedom of speech, the plaintiffs urge the contention that no such thing as peaceful picketing can exist without the presence of a bona fide labor dispute. So with every other means used. If those elements are not present which indicate a legitimate purpose, the act is based upon fraud and is unlawful from its inception.

If the purpose is shown to be unlawful and all means therefore subject to injunction, the question of the illegality of the secondary boycott is not necessarily involved. In most states, including the state of Illinois, the sec-

dary boycott appears to be unlawful regardless of interts of the participants:

Schuster v. *International Association of Machinists*, 293 Ill. App. 177.

Wilson v. *Hey*, 232 Ill. 389.

Carpenters Union v. *Citizens Committee*, 333 Ill. 225.

Anderson Lind Manufacturing Co. v. *Carpenters Unions*, 308 Ill. 488.

Kemp v. *Division*, 241, 255 Ill. 213.

Barnes v. *Typographical Union*, 232 Ill. 424.

Fenske Bros. v. *Upholsterers Union*, 358 Ill. 239.

The Circuit Court of Appeals for the Seventh Circuit as held similarly:

Scavenger Service Corporation v. *Courtney*, 85 F. (2d) 825.

This Court has been most careful to distinguish upon the acts, recent labor cases from earlier cases which have etermined the secondary boycott to be illegal. In the ase of *Senn* v. *Tile Layers' Union*, 301 U. S. 408, this ourt said:

> "The sole purpose of picketing was to acquaint the public with the facts and by gaining its support to induce Senn to unionize his shop" (page 480).

his Court in the *Apex* case, the *Senn* case and other recent ases, by showing the presence of a lawful purpose, has istinguished these cases from the cases holding the secndary boycott to be unlawful, such as:

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Lawlor v. *Loewe*, 235 U. S. 522.

Gompers v. *Buck Stove & Range Co.*, 221 U. S. 418.

In this case we are not considering isolated acts apart from their purpose or motives and then concluding that these isolated facts constitute a secondary boycott illegal in every instance. Rather, we are considering a general purpose and objective which is sought to be accomplished by means which include, among others, the technique known as the "secondary boycott." The plaintiffs urge that if this question is to be considered, that it be dealt with in the light of the purpose and nature of the combination. That the nature of the background, field of activity, and purpose are to be considered, is shown by this Court in the *Apex* case, *supra*, at page 929, Law Ed., where this Court questioned into purposes of the activities in the earlier boycott cases.

Self-Interest Does Not Justify the Defendants' Activities.

The defendants seek to justify their acts, but fail to establish any justification except that of self-interest. The entire standard for determining the validity of acts to promote a labor union's self-interest rests upon and emphasizes the issue of justifiable ends. Self-interest may be asserted only in ways which have a direct relation to benefits that the workers are trying to obtain. This amounts to saying that under a claim of self-interest or benefit, a labor union may not go beyond the sphere of normal and legitimate labor activities. For example, it may not, under the guise of self-interest, seek to prevent more efficient, modern and forward looking methods of marketing and distribution. That self-benefits does not justify restraint of trade has frequently been determined by this Court:

Interstate Circuit v. *United States*, 306 U. S. 208.

Eastern States Lumber Dealers Ass'n v. *United States*, 234 U. S. 600.

Anderson v. *Shipowners Association*, 272 U. S. 359.

Bedford Cut Stone Co. v. *Journeymen Stone-cutters,* 274 U. S. 37.
United States v. *Brims,* 272 U. S. 549.

The record in the present case presents the question of whether the defendant union in order to perpetuate and benefit itself in its method of retail doorstep delivery, may be permitted to prevent the sale of cash and carry milk. The fact that the defendant union represents all dairies in Chicago, except the five or six cash and carry dairies, and with the elimination of this group, would represent all of the distributors must be kept in mind. The defendants have a monopoly well worth securing and they attempt to justify their activities on the ground that the union would be benefited. Not all benefits to a union constitute a legitimate labor dispute.

Since the defendants do not deny the existence of a secondary boycott, the burden rests upon them of showing a lawful purpose and a justifiable end to give validity to this or any other means used. While it is true that the standards whereby courts are to determine as to what constitutes "justifiable ends," have grown with social and economic progress, and with legislative declaration of policy, the defendants have failed to cite any cases by this Court holding the secondary boycott to be a valid technique in cases of this kind.

Frankfurter & Greene: "The Labor Injunction," page 25, etc.

Distinguishing Certain of Defendants' Cases and Arguments.

In answer to cases cited by defendants at page nineteen of their brief as to the separability of violence from peaceful picketing, an examination of the cases there cited shows that in all of these cases the purpose and motive was law-

ful—the motive was of legitimate union concern. Since only the *means* were unlawful, they were, if separable, not enjoinable. The very decisions cited clearly point out this distinction. In *Wise Shoe Co.* v. *Lowenthal,* 266 N. Y. 264, 194 N. E. 749, and *May's Furs* v. *Bauer,* 282 N. Y. 331, 26 N. E. (2d) 279, the picketing was to unionize retail stores. The illegality was merely "noise and shouting" (page 750). In *Baillis* v. *Fuchs,* 283 N. Y. 133, 27 N. E. (2d) 812, *Fenske Bros.* v. *Upholsterers' Union,* 358 Ill. 239, *American Steel Foundries* v. *Tri City Trade Council,* 257 U. S. 184, and *Iron Molders' Union* v. *Allis Chalmers Co.,* 166 Fed. 45, strikes were involved. In none of these cases was there even a claim of efforts at market or price control, or any other element of restraint. The reference to Restatement of the Law of Torts, Sections 815 and 816 is in error. At section 816, it is indicated that non-tortious acts may be enjoined. Similarly, sections 806 and 814.

In order to appear sympathetic with recent legislative policy and judicial principle, the defendants have asserted that their view is more realistic in the light of present economic and social problems. This self-evaluation by the defendants is immediately defeated when it is remembered that the method of distribution they champion is the old unit system of delivering a bottle at a time, such as prevailed in the early days of primitive distribution methods, while the plaintiffs' system is the newer, low-priced volume method of distribution, brought about in the interest of more efficient methods and attendant saving to the public. This cash and carry system is relatively new and is performed by only a very small group of Chicago dairies. It is this *method* of volume distribution to the cash and carry stores that is the reason for the lower prices. The pretense of an attempt to organize is the thinnest sort of disguise. The record shows that all acts were directed

at the suppression of this method of distribution and at the control of price and nothing more. Such a purpose is exactly the type of purpose which is illegal under the clearly defined class of activities by a labor union that may constitute a violation of the anti-trust laws.

B.

Interstate commerce is directly restrained.

If the purpose and end of the conspiracy and combination, contains the elements which are considered to be a restraint *per se*, the only question that remains to be determined is whether interstate commerce is involved. If the combination falls within the proscribed classification, and interstate commerce is affected, the cases held that the nature of the combination creates a direct restraint.

Apex Hosiery v. *Leader*, 84 L. ed. 913.
Interstate Circuit, Inc. v. *United States*, 305 U. S. 28.
Local 167, I. B. T. v. *United States*, 291 U. S. 293.
Bedford Cut Stone Co. v. *Stone Cutters Association*, 274 U. S. 37.
Industrial Association v. *United States*, 268 U. S. 64.
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.
Loewe v. *Lawlor*, 208 U. S. 274.
Montague & Co. v. *Lowry*, 193 U. S. 38.

In cases where these unlawful elements of restraint are present, the restraint upon interstate commerce cannot be a reasonable one.

From the Master's Report, it is clear that he confused the tests to be applied to determine if interstate commerce had been restrained. The Master spoke of the milk as "coming to rest" after reaching the State of Illinois and of the "stream of commerce" having ceased to flow at the time the milk reached the dairy. Having once reached this

conclusion, it was easy and natural for him to conclude that the Anti-Trust Laws had not been violated. That the "stream of Commerce" test is only to be used in limited instances, *i. e.*, in tax cases, was clearly indicated by this Court in the case of *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1. In anti-trust cases, the test of whether interstate commerce is burdened, is always as to the *effect* of the acts upon interstate commerce and never as to the point at which the interference took place, or if the goods had come to rest or had ceased to flow in the stream of interstate commerce.

Bedford Cut Stone Co. v. *Journeymen Stonecutters' Ass'n,* 274 U. S. 37.

Montague & Company v. *Lowry,* 193 U. S. 38.

Local 167, I. B. T. v. *United States,* 291 U. S. 293.

Factually, there can be no question but that there is an actual physical flow of milk in interstate commerce into the City of Chicago, and from the proof in the case this flow is uninterrupted from the farm receiving station, through the Chicago dairy and into the retail cut-rate store. In consonance with this uninterrupted "factual current," the authorities hold that as a matter of law the interference with the orderly distribution of milk in Chicago in the manner committed by the defendants, burdens and restrains this flow.

The District Court made the following findings of fact pertinent to the question of the relationship of the defendants' acts to Interstate Commerce:

> "The plaintiff, Lake Valley Farm Products conducts a milk pasteurizing plant in the City of Chicago, Illinois, and purchases its daily fluid milk requirements from the plaintiff, Lake View Cooperative of Watertown, Wisconsin, which in turn receives such milk from surrounding farmers, residents of the State of Wisconsin; that the milk is transported by motor truck to the Chicago, Illinois plant where it is pasteurized,

bottled and sold to 'vendor' distributors who deliver the product to various milk stores (Finding 'Third' R. 248).

That about 40% of all milk sold as fluid milk and about 75% of all milk separated and sold as cream in Chicago, comes from milk produced outside of the State of Illinois; that foreign and local milk is commingled, sold in competition with and is indistinguishable each from the other; that pasteurization requires only about one-half hour and nothing is added to or taken from the milk in such process and that only a few hours separate the receipt of the bottled milk at the retail store from its point of origin in the State of Wisconsin (Finding 'Eighth' 9. 249)."

The contention of the defendants that their activities were of a local nature is of no validity. What they mean is that the overt acts were committed within the State of Illinois. Numerous decisions of this Court have determined that local transactions may burden and restrain interstate commerce because of the relationship of such acts to interstate commerce. In the case of *Local 167 I. B. T.* v. *United States,* 291 U. S. 293, this Court said:

"But we need not decide when interstate commerce ends and that which is intra-state begins. The control of the handling, the sales and the prices, at the place of origin before the interstate journey begins, or in the state of destination, where the interstate movement ends, may operate directly to restrain and monopolize interstate commerce."

Cases similarly holding are:

United States v. *Rock Royal Cooperative,* 307 U. S. 533.

National Labor Relations Board v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1.

Baldwin v. *Seelig,* 294 U. S. 511.

National Labor Relations Board v. *Fainblatt*, 306 U. S. 601.

Santa Cruz Packing Co. v. *National Labor Relations Board*, 303 U. S. 453.

Similar decisions have been rendered by this Court as to the intermingling of local transactions with interstate commerce in the cases of:

Consolidated Edison Company v. *National Labor Relations Board*, 305 U. S. 197.

Currin v. *Wallace*, 306 U. S. 1.

Mulford v. *Smith*, 307 U. S. 38.

Nebbia v. *New York*, 291 U. S. 502.

This Court has determined that acts of themselves local may constitute violations of the Anti-Trust Laws, and will be enjoined whenever necessary for the protection of interstate commerce against restraints:

Local 167, I. B. T. v. *United States*, 291 U. S. 293.

Loewe v. *Lawlor*, 208 U. S. 274.

Eastern States Lumber Dealers Association v. *United States*, 234 U. S. 614.

Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Association*, 274 U. S. 37.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

The argument made by defendants that even if the plaintiff dairy was put out of business that others will sell milk and that the plaintiffs have not shown that the total of all milk coming into the state would be diminished, is improperly conceived. Size has never been the determining factor in determining the question of relationship to interstate commerce, and the plaintiffs need not prove that the public would be unable to get milk.

National Labor Relations Board v. *Fainblatt*, 306 U. S. 601, 606.

Apex Hosiery v. *Leader*, 84 L. ed. 913, 917.

II.

HE RECORD FAILS TO PRESENT A CASE OF "LABOR DISPUTE" AS DEFINED BY THE NORRIS-LA GUARDIA ACT.

Since the defendants urge that the provisions of the orris-LaGuardia Act grant them immunity, they have ie burden of first showing that a labor dispute, as defined that Act exists, and second, that if a labor dispute does ist, that the Act does, in fact, grant such immunity.

The Clayton Act, Section 6, was intended to eliminate ie application of the Anti-Trust Laws to the legitimate tivities of labor unions. The courts were thereby called on to determine the terms and limits of "legitimate objects" as used in the Act. This was done according to the en existing precedents and the philosophies of the Courts. illegality of purpose was first determined, the Clayton ct could not be claimed as an exemption.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.
Bedford Cut Stone Co. v. *Stone Cutters Association,* 274 U. S. 37.
United States v. *Brims,* 272 U. S. 549.
Coronado Co. v. *United Mine Workers,* 268 U. S. 295.

Meeting broadening concepts of the field of labor activy, the Norris-LaGuardia Act widened the area within hich protection is granted to the activities of labor unions. he Act had no effect upon acts committed by a labor union hich are not union activities, but which are unlawful egardless of the class of persons who perform them. ven a further broadening of the definition of *labor dispute* ould leave out the performance of the defendants in this ase. Their acts differ in nature and not in degree. The laintiffs do not and are not compelled to oppose legitimate

or normal union objectives. The plaintiffs do not argue that such normal objectives are unlawful because they burden or restrain interstate commerce. Rather the plaintiffs ask relief against acts which are unlawful of themselves, and are not rendered lawful by the mere circumstances that the persons committing them happen to be labor union officials. Neither of these statutes was intended to grant immunity to unions if they stepped beyond such normal and legitimate activities and attempted purposes and committed acts illegal, regardless of by whom committed. This legislation left great latitude to the courts, and Congress has passed no law exempting labor unions from the terms of the Anti-Trust laws. This Court in the *National Labor Relations Cases,* 301 U. S. 1, stated at page 31:

> "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of congressional power. Acts having that effect are not rendered immune because they grow out of a labor dispute."

Also:

> *Virginia Railway Co.* v. *System Federation,* 300 U. S. 515.
>
> *Apex Hosiery* v. *Leader,* 84 L. ed. 913, 919.

No Labor Issue Is Involved.

The burden rests upon the defendants to show that all of the elements made necessary to constitute a labor dispute as defined by the Norris-LaGuardia Act are present. Subsections (a) and (c) of Section 113 of that Act provide as follows:

> "A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, craft or occupation; or have direct or indirect interests therein; * * *"

Section 113 (c) of the same Act provides:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

In order to constitute a labor dispute, there must first be a real, factual dispute concerning the specific types of matters covered by sub-section (c). Sub-section (a), while adding to the classes of persons who may be parties to a labor dispute, does not eliminate the necessity for there being a real issue as to the terms and conditions of labor or to matters of representation.

The District Court found that the "vendors" were independent business persons and not employees of the dairy (R. 248). That the defendant union is a craft union for drivers who are *employees* of dairies only is further shown by their contract form with dairies (R. 147-154) which does not refer to and could not possibly govern vendors; the sworn answer of defendants indicating vendors are not acceptable to membership (R. 53); the testimony of the officers of the defendant union (R. 107, 109, 112). The vendors have chosen their own union: there are no persons capable of unionization.

Nor do the defendants show what the claimed dispute is about. The defendants advance such arguments as that a labor dispute need not be limited to employer and employee; that efforts to raise wages and living standards, to unionize a whole industry, and the like, but fail to show a record involving any of these questions. They fail to show a dispute as to the terms or conditions of employment. At most the defendants have shown that all parties to this case are in the milk business and therefore belong to the class in which a dispute might be possible.

The Defendants' Purpose Is Outside the Field of Permissible Activity.

This Court must determine into the purposes of the defendants' acts and all the surrounding circumstance. The mere fact that all are in the same craft and that the acts are committed by a labor union does not prove that a "labor dispute" is involved.

Scavenger Service Corp. v. *Courtney,* 85 F. (2d) 825 (C.C.A. 7, 1936).

Mayo v. *Dean,* 82 F. (2d) 554 (C.C.A. 5; (1936).

Waterfront Employers, et al, v. *C. I. O.* (D.C. Ore.; 1938) 1 Labor Cases 386.

Fehr Baking Co. v. *Bakers' Union,* 20 F. Supp. 691 (D. C. La.; 1937).

also:

Thompson v. *Voekhout,* 273 N. Y. 390, 7 N. E. (2d) 674.

as to cases where there are no persons to organize.

The dispute is not over terms or conditions of employment. This is not involved. The dispute is over the right of the plaintiffs to distribute milk at a price lower than that generally prevailing for home-delivered milk, *i.e.,* the right to sell cut-rate cash and carry milk. The vendor is required to make on an average of only ten stops each day, and is able to distribute more than five times as much milk as on a retail route in a shorter time with a higher net income to himself and under better working conditions. The District Court found that it was the *method* of distribution and not wages or any other element that made a lower sale price possible. The plaintiffs feel that this is the crux of the entire case and explains all of the acts of the defendants. The pretended opposition to the vendors is actually opposition to cut-rate price. A vendor has no inherent advantage over the employed driver. Unless

the milk is distributed in large quantities to cash and carry stores, there is no difference between the two and no inherent comparative advantages or disadvantages.

The fertile field of labor litigation has brought numerous cases to this Court for interpretation and the defendants have drawn from these cases to further their argument that a labor dispute exists as defined by the Norris-LaGuardia Act. None of these cases involved a record where a labor union had sought to control price or dictate the method of market distribution, or to eliminate competition by employing all types of violence together with means ordinarily associated with labor activity.

The Defendants' Purpose to Destroy Plaintiff's Business Cannot be a Labor Dispute.

While the defendants' acts are generally to prevent the entry into the Chicago market of cash and carry cut-rate dairies, as to the plaintiff dairy, it is a conspiracy to ruin its business. A conspiracy to limit this type of competition. The activity of the defendants is applied at the point which it is most effective to destroy business. The record negatives any desire to organize. There is no evidence of the presentation of any proposed representation agreement, demands for recognition, meetings or requests as are present in such cases as *Lauf* v. *Schinner,* 303 U. S. 323, and *New Negro Alliance* v. *Sanitary Grocery Co.,* 303 U. S. 552. Mr. Bryant, secretary of the Defendant Union testified that the defendants' plan of action was successful, although no cut-rate dairy had been organized by the defendant union. Such testimony could only mean that it had been successful in destroying business.

It is to be conceded that labor unions in their efforts to represent workers may by picketing or other means of publicity enlist public opinion to the extent that a company's sales will diminish. This is labor's legitimate and

effective weapon. Because this weapon is so effective, it is the duty of the Court in a case of this kind to carefully determine into the purposes and ends of such publicity to determine that no fraud exists and that these destructive means are justified by proper ends. Unless a labor issue plus an effort to organize or represent is present, the union is fraudulently availing itself of a protection not intended as a cloak for illegal purposes. At the time of the signing of the Norris-LaGuardia Bill, the President of the United States made public the letter of the Attorney General of the United States dated March 23, 1932, giving his opinion as to the effect of the Act upon the Anti-Trust Laws. This letter excluded racketeering and other illegality of purpose, and concluded that the Act did not prevent injunctions in such cases.

This Court in the *Senn* case very carefully stated that the purpose of the picketing was to acquaint the public with the facts of a labor dispute. This can be the only purpose of picketing. There can be no enforcements of a conspiracy as in this case which injured the business of small independent groceries and delicatessens by means of picketing, violence, and the stopping of delivery of other necessary commodities into such stores, without a very careful examination into the real purposes of all of such acts.

The validity of picketing can never be determined by a rule so general that the purpose is to be disregarded. The defendants seek to use the Norris-LaGuardia Act as an immunity and to justify their picketing as a lawful and normal means of labor publicity. They do not claim that their picketing is for any other purpose. If they can not show a labor dispute, no right to picket is claimed or exists. The Anti-Trust laws are laws of broad substantial application treating with rights admittedly broad and general. On the other hand, the Norris-LaGuardia Act is an

t concerning procedure only and an act in limitation of eretofore existing rights. Since this Act creates exceptons to general jurisdiction, the extent of these exceptions ust be defined with precision. That a labor dispute exists ust be determined without question.

The Record and Findings Do Not Establish a Labor Dispute.

In the present case the District Court made no findings f fact as to labor dispute in its conclusions of law, it merely id: "That a labor dispute exists as defined by the terms f the Norris-LaGuardia Act" (R. 250). Neither in the ndings of fact nor in the conclusions of law did the Disict Court indicate the nature or issue of such dispute. uch an absence of findings could not support the decree rdering dismissal. The Master's Report does not supply is want. The great bulk of the Master's Report (R. 03 to 223) is taken up by an analysis of the complaint and nswer and by an improper examination and lengthy quotaons from certain decisions. The Master was not at all ertain on this question, and at page 216 of the record at aragraph 33 said: "Whether or not the facts in the case t bar constitute a 'labor dispute' as contemplated by the rovisions of the above Act is not entirely free from doubt." he Master then proceeds to consider various decisions and nally states that he is of the opinion that the dispute volved brings the present case within the provisions of ne Norris-LaGuardia Act in that it involves persons enaged in the same industry, etc., using the wording of the ct verbatim. The Master makes no finding of any facts pon which a decision that a labor dispute exists could be ased.

The opinion of the Circuit Court of Appeals stated that ney found the record quite convincing that no question f wages or conditions was involved, but that it was quite

conclusive that the vendors distributing plaintiff dairy's milk had a higher income than the defendant drivers. The motions of the plaintiffs to strike portions of the Master's Report and objecting to the same was disregarded, and the objections to the report as against the manifest weight of the evidence was overruled. Nowhere is evidence introduced by the defendants to show that the vendors' working conditions were worse than drivers of the defendant union, but the record contains considerable undisputed testimony of shorter hours, higher income and better working conditions on the part of the plaintiff's vendors (R. 67, 68, 73, 74, 97, 148). The fact that no findings were made, and that the record does not reveal any facts necessary for the finding of a labor dispute, prompted the Circuit Court of Appeals to reach its conclusion that the conspiracy was one to ruin the plaintiff's business.

The 7th Circuit has held that a similar conspiracy to prevent persons from engaging in business was not a labor dispute under the Norris-La Guardia Act, and that all means used to accomplish this purpose were rendered unlawful:

> *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d) 825, 830.

If the acts of the defendants are held to violate the Sherman Anti-Trust Law, these acts cannot contain the elements necessary to constitute a labor dispute as defined by the Norris-La Guardia Act. Violation of the Sherman act presupposes a combination aimed at restraint, monopoly and control. If these elements are present, there can be no labor dispute. The two statutes cannot conflict.

III.

THE RIGHT OF FREEDOM OF SPEECH GRANTS NO IMMUNITY TO THE ACTS OF THE DEFENDANTS.

The Defendants Fail to Define Their Claimed Right.

The defendants' arguments concerning free speech fail to clearly define the source and extent of the claimed right. In their Petition for Certiorari, at page 46, they contend that the due process clause of the Fourteenth Amendment to the Constitution of the United States prevents the issuance of injunction. They proceed to cite various authorities, all of which construe the validity of that amendment. The Fourteenth Amendment refers only to acts by the States, and even with the very broadest interpretation could not possibly refer to acts by any branch of the Federal Government. The defendants then must base their claimed right elsewhere. Guaranties against federal encroachment are found in the first ten amendments to the Constitution. Of these, only the first specifically mentions freedom of speech, and this amendment refers only to Acts of Congress. The Fifth Amendment providing that a person may not be deprived of life, liberty or property without due process of law does not appear to have been invoked by these defendants. The defendants have failed to indicate a single case of this Court construing the Fifth Amendment as protective of their claimed activities or in any other way supporting their contention of immunity.

The case of *Brinkerhof* v. *Hill,* 181 U. S. 673 referred to by the defendants at page 48 of their Petition for Certiorari, as holding that the guarantee of freedom of speech extends to judicial acts, upon examination reveals that the case refers purely to *procedural methods,* to wit: the right to appear in one's own defense. The case does not refer to the denial by a court of substantive rights existing out-

side of court procedure. In the present case, defendants do not claim that they were denied a chance to present their defense.

The Nature of the Dispute Must Be Determined.

If, however, and for the sake of this argument, it is conceded that the claimed right to free speech exists, it becomes necessary to determine into the nature and extent of this right. Any Constitutional right, no matter how broad, must have limitations and conditions of applicability. In the recent case of *Thornhill* v. *Alabama*, 84 L. ed. 659, 664, this Court held the state statute invalid and commented on the fact that the law failed to take into consideration (among other elements) the *nature* of the dispute or the means employed, and at page 667, this Court there said:

> "It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist."

The footnote at that point in the above decisions refers to the following cases:

Senn v. *Tile Layers Union*, 301 U. S. 468.
Ethel Gas Corp. v. *United States*, Oct. '39 term, N. 536, 60 S. Ct. 618.
National Labor Relations Board v. *Newport News Ship Bldg. & Dry Dock Co.*, 308 U. S. 241.
West Coast Hotel Co. v. *Parrish*, 300 U. S. 379.
Nebbia v. *New York*, 291 U. S. 502.
Dorchy v. *Kansas*, 272 U. S. 306.
Eastern States Retail Lumber Dealers Ass'n v. *United States*, 234 U. S. 600.
Aikens v. *Wisconsin*, 195 U. S. 194.
Holden v. *Hardy*, 169 U. S. 366.

Picketing By a Labor Union Must Be For a Lawful Purpose.

The defendants would ask this Court to adjudicate that their right to picket be granted immunity without an inquiry into the nature of such right or into the means used. In other words, the defendants ask that these rights should be granted without consideration of the rights of society or of social needs and demands. Specifically in the present case, without considering the right of the members of the public to pick up their milk needs at cash and carry stores free from violence, intimidation and threat. The plaintiffs ask no such general grant of immunity to their rights, which they feel equally as important. The Plaintiff dairy's right to conduct its own business, the vendors' right to select their own representatives for collective bargaining, and the public's right to go unmolested upon the city streets. The plaintiffs ask that the claims and purposes of both sides be inquired into.

In any other conclusion, there is great danger that democratic prerogatives may be subverted into dangerous and unintended uses. In the very recent case of *Minersville School District* v. *Gobitis,* 84 L. ed. 993, Justice Frankfurter, in the opinion at page 995, said as to danger inherent in too general an interpretation of the right of freedom of religion: "To state the problem, is to recall the truth that no single principle can answer all of life's complexities."

Plaintiffs urge that no single principle can be as broad as the defendants claim freedom of speech to be. Inquiry must be made into the purpose to which such right is being put and into the means whereby such right is sought to be enforced. Unless a limitation is placed upon the right to free speech, even in cases of a claimed labor dispute, the very purposes for which these rights were granted would be the cause of our undoing.

The view urged by the plaintiffs presents no danger or threat of unjust curtailment. This is not a case of previous restraint such as by a required license to speak as condemned by this Court recently in the case of *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496 or *Schneider* v. *Irvington,* 303 U. S. 471, and in other cases. Here there has been a full and lengthy Court hearing. The picketing is not prospective and the questions of restraint of trade have first been determined.

The right to picket is not an ordinary right of free speech. It is more than a mere voicing of opinion. It connotes that various issues are present without which this peculiar technique is not to be justified. The act immediately identifies itself as an evidence of that struggle between industry and labor which concerns itself with wages or terms and conditions of employments. It is not the spontaneous utterance of the moment, but is rather an act done in furtherance of a program and purpose to achieve a preconceived objective. Picketing is not merely to inform; it is to cause to act. Picketing connotes then that there are present those elements which by legislative standards, we now say constitute a "labor dispute", or create a situation held to arise out of a labor dispute. The right to picket does not exist in a vacuum but always in relation to the existence of those elements which necessarily call it into being and without which the right does not exist. The right is limited to a showing of legality of purpose. The right is an not absolute license to speak, but is qualified by these reservations.

Schaefer v. *United States,* 251 U. S. 466.
Forhwerk v. *United States,* 249 U. S. 204.
Whitney v. *California,* 274 U. S. 357.

That the right of freedom of speech does not extend to the protection of utterances pursuant to illegal purpose is adequately shown by this Court in:

Aikens v. *Wisconsin,* 195 U. S. 194, 206.

Gompers v. *Buck's Stove & Range Co.*, 221 U. S. 418, 437.
Near v. *Minnesota*, 283 U. S. 697.
Dorchy v. *Kansas*, 272 U. S. 306.
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

In the present case, the record indicates that none of e elements necessary for the existence of a labor dispute e present, but shows a conspiracy to step beyond legiti-ate union activity into the fields of price control, monop-y, suppression and distribution control. The acts of e defendants are of the very type expressly condemned this Court in the *Apex* case, *supra*.

In the case of *Senn* v. *Tile Layers' Protective Union*, 1 U. S. 468, this Court carefully exempted cases involv-g the element of fraud in construing the Wisconsin bor Law. Such a conclusion indicates that it is neces-ry to determine if the acts are picketing *in fact*, or erely an effort to accomplish unlawful ends by pretense d fraud. If the latter is the case, the Court may well ld that it is not the mere carrying of a banner that nstitutes picketing, but it is the presence of a normal d legitimate cause that meets the definition of the rm.

Restatement of the Law of Torts, Section 775, page 98.

Just as the Norris-LaGuardia Act determined the legis-ive policy to be that acts involving fraud and violence e not immune from injunction, so must the Court deter-ne its judicial policy, and it can well be held that if e purpose is not normal and legitimate, and if the eans are fraudulent, that the acts do not constitute keting as defined by the applicable legal standards. is to the end that an illiberal, reactionary and self-in-

terested labor union may not be permitted to prevent new, better and cheaper methods to appear on the market, because courts are unwilling to determine what is behind the purpose of the man carrying the banner.

IV.

THE ONLY RELIEF FOR PLAINTIFFS IS BY INJUNCTION.

The District Court (Finding "Fourteenth", R. 250) found that fifteen to twenty stores ceased distributing products of the plaintiff dairy in the month preceding the filing of the action, and that twenty-five to thirty stores were similarly lost prior to the entry of the decree. That court also found that more than one hundred stores had been picketed and that there is no way to ascertain the number of consumer-patrons lost by the acts of the defendants (R. 250).

The products of the plaintiff dairy are sold by approximately four hundred stores. The record shows that complaints as to acts of violence, were made to the Police Department and to the State's Attorney in every year during the period involved. The stores are too numerous and too widely scattered for police protection against violence. The Police Department would have no authority to prevent picketing, the stopping of deliveries, or to prevent the other acts of the boycott, because many of these acts when separately viewed, are not unlawful. Only a judicial determination that an unlawful conspiracy and combination exists declaring *all* means of effecting the same to be illegal, can give relief to the plaintiffs. Unless the plaintiffs obtain relief by injunction, they will be deprived of the equal protection of the law, and their property and rights will be taken from them, all in violation of the Constitution of the United States of America.

Although the defendants attempt to limit the argument, by confining their contentions principally to picketing, the record indicates that violence and the threat of violence creates an equally important question, and relief against violence is of equal necessity to the plaintiffs.

CONCLUSION.

The purposes and activities of the defendants are not to unionize, and are not the normal and legitimate activities of labor unions. The defendants can not accept the "vendor" distributors as members of their union; there are no persons to organize, and there is no labor dispute. The conspiracy of the defendants is unlawful and all means of accomplishing the same may be enjoined. The combination and conspiracy of the defendants is *per se* an unreasonable restraint of interstate commerce in violation of Sections One and Two of the Sherman Anti-Trust Law.

WHEREFORE, the plaintiffs respectfully pray that the judgment of the Circuit Court of Appeals for the Seventh Circuit should be confirmed and the decree of dismissal of the District Court entered herein be reversed and the cause remanded.

Respectfully submitted,

ARTHUR R. SEELIG,
Attorney for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 20.—October Term, 1940.

Milk Wagon Drivers' Union, Local No. 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al., Petitioners,
vs.
Lake Valley Farm Products, Inc., Amalgamated Dairy Workers, Local Industrial Union No. 819, et al.

On petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 18, 1940.]

Mr. Justice Black delivered the opinion of the Court.

This proceeding presents two questions: First, Does there here exist a "labor dispute" within the meaning of the Norris-LaGuardia Act?[1] Second, If there is a "labor dispute", must the jurisdictional prerequisites of the Norris-LaGuardia Act[2] be complied with before injunctive process can be used against a labor union accused of violating the Sherman Anti-Trust Act?[3]

The District Court found that this was a case "involving or growing out of a labor dispute"; that plaintiffs (respondents here) had failed to satisfy the prerequisites of the Norris-LaGuardia Act; and that, accordingly, the court was without jurisdiction to grant either a temporary or a permanent injunction. The Circuit Court of Ap-

[1] 29 U. S. C. §§ 101-115, 47 Stat. 70. The Act defines a labor dispute as follows: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U. S. C. § 113(c), 47 Stat. 73.

[2] "No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act . . . ." 29 U. S. C. § 101, 47 Stat. 70.

[3] 15 U. S. C. §§ 1-7, 26 Stat. 209, as amended. Section 1 provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

peals reversed, one judge dissenting;[4] it was the opinion of that court that the case did not grow out of a labor dispute, and that even if it had, a federal court would have jurisdiction to enjoin if the Sherman Act had been violated.[5] Because of the importance of these questions, we granted certiorari.[6]

The Norris-LaGuardia Act applies to labor disputes between "persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein."[7] Here, all of the parties have "direct or indirect interests" in the production, processing, sale, and distribution of milk. Plaintiffs, who sought the injunction, were four: one was the Chicago local of a C. I. O. union, the Amalgamated Dairy Workers; two were Chicago dairies whose milk was processed and distributed by members of the C. I. O. union;[8] the fourth was a Wisconsin cooperative association which supplied milk to the plaintiff dairies. Defendants were the Chicago local of the A. F. of L. Milk Wagon Drivers' Union, and its officials. The defendant union is a craft organization limiting its membership to milk wagon drivers; the plaintiff union is organized along industrial lines, and its membership consists of all kinds of dairy workers, including inside help, office workers, wagon drivers, helpers, sweepers and janitors.

A brief statement as to the background of the controversy is necessary for a better understanding of the issues. The Chicago local of the A.F. of L. Milk Wagon Drivers' Union was organized in 1902. Since the organization, working conditions of the members have been materially improved; hours have been shortened, wages have been raised, and vacation periods with full pay have been secured. These better terms and conditions of employment have moved concurrently with a more or less steady increase in union membership and influence. At the time this litigation was begun the union had more than five thousand members.

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[4] 108 F. (2d) 436.

[5] There is no diversity of citizenship, and federal jurisdiction, if present at all, exists because of violation of the Sherman Act. The contention that interstate commerce is involved stems from the fact that defendants, in Chicago, picketed retail stores selling milk produced in Wisconsin. In the view we take of the case, we find it unnecessary to pass on this question.

[6] 309 U. S. 649.

[7] 29 U. S. C. § 113(a), 47 Stat. 73.

[8] As to one of these plaintiff dairies, the complaint was voluntarily dismissed.

With the approach and continuance of the depression of the early Thirties, the milk business, like other industries, was in acute distress. Loss of profits from decreased demand stimulated dairies to devise new and cheaper methods to obtain and serve customers. Under the long existing practice in Chicago, dairies had owned milk trucks and wagons, and had operated them with employee drivers—chiefly members of the A.F. of L. local. A major part of the business consisted of door-to-door deliveries to retail customers. Some of the A.F. of L. drivers also delivered milk to retail stores, those stores in turn selling to their customers. What appears to have been an insignificant part of the milk supply of pre-depression Chicago was delivered by retail milk "peddlers" who bought from the dairy at wholesale and sold at retail from their own trucks or wagons. But with the depression this practice of sale by "peddlers" expanded, branched out into sales to retail stores, and developed into what is called the "vendor system"—around which revolves the present controversy. Retail peddling started the controversy; at the root of the conflict, however, is this later emerging "vendor system", under which "vendors" delivered milk at wholesale to retail stores. Under this system, plaintiff dairies make daily sales of milk to individuals owning their own trucks. These individuals, called "vendors", resell the milk to retail stores. Unsold milk is no loss to the "vendor", because the dairy takes it back at the full purchase price.

With the spread of this new competitive system, the business of the dairies employing union milk wagon drivers decreased. Many of the union drivers lost their jobs and were dependent upon their union's relief funds and upon public relief agencies for their support. How many of those who lost their jobs became unemployed as the result of the depression and how many were displaced by the growth of the "vendor system" cannot be determined; both causes undoubtedly contributed.

The stores buying milk from plaintiff dairies through these vendors made a practice of selling it below the standard prices charged for milk supplied by dairies employing A. F. of L. drivers. Defendant union and its members claimed that the reason the price could be cut was that the vendors worked long hours, under unfavorable working conditions, without vacations, and with very low earnings. On the other hand, the vendors and the dairies utilizing their

services asserted that the reason for the lower prices was that the vendor system was more economical, that under it more milk could be delivered by wholesale to the cash and carry cut-rate stores, and that such distribution cost less even on the same wage level than did door-to-door distribution. As the vendor system made increasing inroads on the business of the union dairies, the opposition of the defendant union became more active. Its members insisted that the vendor system constituted unfair competition, depressing labor standards. To combat it, they attempted—as the District Court found from the facts—to unionize the employees and vendors of the dairies utilizing this plan. Not succeeding in this attempt, in 1934 they began picketing the so-called cut-rate stores. The picketing was carried on almost continuously until this suit was filed. Pickets usually carried placards denouncing cut-rate stores as unfair to the A. F. of L. local. During the years in which this strife continued, store windows were broken, personal altercations occurred, charges and countercharges were frequent, arrests were made and court proceedings instituted. Finally, in March, 1938 —about two months before the complaint was filed in this case —the vendors and the other employees of the plaintiff dairies organized the plaintiff union under a C.I.O. charter. Thereupon signs were placed inside the cut-rate store windows, announcing that the milk handled by the stores was processed and delivered by members of the plaintiff union. But this did not settle the long-standing controversy; the picketing continued, and this suit followed.

The petition for an injunction rests primarily upon the charge that the defendant union and its officials had entered into a conspiracy to interfere with and restrain interstate commerce in violation of the Sherman and Clayton Acts. It is contended by plaintiffs that the controversy is not a labor dispute within the meaning of the Norris-LaGuardia Act, but is an unlawful secondary boycott of which the purpose is not to unionize the vendors but to obtain for the defendants' employers a Chicago milk monopoly at a sustained high price level, contrary to the Sherman Act.

First. The complaint on its face is probably sufficient to show that a labor dispute existed.[9] We need not decide that point,

[9] Among other things, the complaint revealed that the vendors were members of the C. I. O. union which had made a contract touching on the terms and

however, for the case proceeded to final judgment. Defendants filed an answer, and the court referred plaintiffs' motion for a temporary injunction to a special master. The master conducted extensive hearings, and heard evidence offered by both sides. In his report, the master found, in the language of the Norris-LaGuardia Act, that the case arose out of and involved a labor "dispute between one or more employers or associations of employers and one or more employees or associations of employees", all of whom were engaged in the same industry, trade, craft or occupation, namely, the milk industry; that defendants had attempted for some time to unionize the employees of the plaintiff dairies and of other cut-rate dairies, and that the picketing was an effort on the part of the defendant to compel the vendors and wagon drivers of the dairies to join the defendant union for the purpose of improving working conditions and wages of vendors; that the working hours of the plaintiff dairies' employees were longer and the wage scales lower than the union standards.[10] The District Court adopted the findings of the master, and made further findings of its own.

It is not material, as the Circuit Court of Appeals thought, that defendants' attempt to unionize the vendors was upon the condition that they would cease to handle milk as "vendors" if admitted to membership in the union. There are few instances of attempted unionization in which a change to union membership would not require some alteration in the conditions or terms of employment. Union membership contemplates change—change which it is believed

conditions of employment with the plaintiff dairies, that the vendors' right of organization and collective representation for the purpose of avoiding industrial strife with the defendant union should be protected, and that the plaintiff union and the defendant union were in actual competition in obtaining employment in connection with the sale and distribution of milk in the City of Chicago.

[10] Plaintiffs complain of the form in which this last finding was made. Undoubtedly, the Master failed to use apt language in expressing his conclusions. But the language used, read in its context and in conjunction with the entire record, reveals that the objections to the finding are without foundation. What the Master said in his report was: "The Master is of the opinion that the dispute involved in the instant case brings it within the provisions of the Norris-LaGuardia Act . . . . The testimony of defendants' witnesses is to the effect that they have attempted for some time to unionize the employees of the Plaintiff Dairies and other cut-rate Dairies; that the picketing complained of herein is an effort to compel the vendors, and wagon drivers employed by the Plaintiff Dairies to join the defendant union for the purpose of improving working conditions and wages of said vendors and employees of the Plaintiff Dairies, and that the working hours and wage scale of Plaintiff Dairy's employees is lower than the union scale."

will bring about better working conditions for the employees. Moreover, the evidence offered by the plaintiffs themselves shows that membership in defendant union would have involved no substantial change in the vendors' relationship to the dairies. Truck drivers employed by dairies were eligible for membership in the defendant union, and plaintiffs' evidence showed that the "vendors" were actually regarded as employees of the plaintiff dairies. The plaintiffs offered as a part of their evidence the articles of agreement between the plaintiff union and the plaintiff dairies; each of those contracts contains the following provision: "The term 'employee', as used in this Agreement shall mean all wholesale and retail route salesmen or drivers and their helpers and assistants; all milk distributors commonly referred to as 'Vendors'; all persons employed in the sale and distribution of the Company's products; . . . ." And each agreement provided for a closed shop and gave to plaintiff union the exclusive right to represent all the dairy's employees, including the vendors, for purposes of negotiating on "all questions of wages, hours, and conditions of employment that shall prevail in the Company's business."[11]

Whether rightly or wrongly, the defendant union believed that the "vendor system" was a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards. To say, as the Circuit Court of Appeals did, that the conflict here is not a good faith labor issue, and that therefore there is no "labor dispute", is to ignore the statutory definition of the term; to say, further, that the conditioned abandonment of the vendor system, under the circumstances, was an issue unrelated to labor's efforts to improve working conditions, is to shut one's eyes to the everyday elements of industrial strife.

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[11] On the subject of the actual status of the vendors, the president of one of the plaintiff dairies testified as follows:

"The Witness [Sigfried Weiss, president of the Lake Valley dairy]: He wants to know if they are employed by the dairy?

"Mr. Riskind [attorney for defendants] Yes, that is all I want to know.

"A. Now that is not so easy to say, if they are employed or not. We have contracts, and they are bound to our dairy. They are actually employed by our dairy, but we have the vendor system, where they own their own trucks and they pay their own expenses and they buy milk at a certain price at our dairy. In one way they are employees, and in another way, we don't pay wages. We have to pay whatever they can make over a certain price. We charge them a certain price."

Nor does the controversy cease to be a labor dispute, as the Circuit Court of Appeals thought, because the plaintiff dairies' employees became organized.[12] This merely transformed the defendants' activities from an effort to organize non-union men to a conflict which included a controversy between two unions. A controversy "concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment" is expressly included within the definition of a labor dispute in the Norris-LaGuardia Act.

The District Court not only found that a labor dispute existed, but also found that it was without jurisdiction to grant an injunction because the requirements of the Norris-LaGuardia Act had not been met. We do not understand that the Circuit Court of Appeals overturned this finding. That court said: "Again, if jurisdiction were conceded and there was a labor dispute involved, then it is quite doubtful if appellants could recover because they have not in every respect complied with the requirements of the Norris-LaGuardia Act." We agree with the District Court that this case grows out of a labor dispute. Since the requirements of the Norris-LaGuardia Act have not been met, the court did not have jurisdiction to grant an injunction unless by virtue of that phase of the bill which charged a violation of the Sherman Anti-Trust Act.

Second. The Court of Appeals concluded that the defendants' picketing activities constituted a secondary boycott in violation of the Sherman Anti-Trust Act, and that for this reason, regardless of the Norris-LaGuardia Act, the District Court had jurisdiction to grant an injunction even though the case arose out of or involved a labor dispute.[13] In this the Court was in error.

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[12] "Under these conditions we think it cannot be fairly said that there is a good faith labor issue involved between the defendant union and either the dairies' employees or the 'vendors' or the stores. Especially is this true when we consider the fact that the 'vendors' are organized as members of a well-recognized union, which with their consent is acting as their representative in matters dealing with their employers." 108 F. (2d) at 442.

[13] The Court said: "Moreover, we think it is clear from the findings and from the undisputed evidence in this case that the appellees' picketing activities constitute a secondary boycott, which is an unlawful activity, of which appellees could not avail themselves even though a labor dispute were involved. See Duplex Printing Press Company *v.* Deering, 254 U. S. 443; Meadowmoor Dairies, Inc. *v.* Milk Wagon Drivers' Union of Chicago, No. 753, 371 Ill. 377." 108 F. (2d) at 442.

No specific language of the Norris-LaGuardia Act is pointed to in support of the theory that the Act was to be inapplicable where injunctions are sought against labor unions charged with violating the Sherman Act in the course of labor disputes. On the contrary, section 1 of the Norris-LaGuardia Act provides that "No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act." This unequivocal jurisdictional limitation is reiterated in other sections of the Act. The Norris-LaGuardia Act—considered as a whole and in its various parts—was intended drastically to curtail the equity jurisdiction of federal courts in the field of labor disputes. And this Court has said that "the legislative history of the Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act."[14]

The committee reports on the Norris-LaGuardia Act reveal that many of the injunctions which were considered most objectionable by the Congress were based upon complaints charging conspiracies to violate the Sherman Anti-Trust Act. To end the granting of injunctions of this type, section 5 of the Norris-LaGuardia Act deprived federal courts of jurisdiction to issue restraining orders or injunctions "upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated . . . ." In reporting the bill, the House Judiciary Committee said: "This section is included principally because many of the objectionable injunctions have been issued under the provisions of the anti-trust laws, a necessary prerequisite for invoking the jurisdiction of which is a finding of the existence of a conspiracy or combination and without which no injunction could have been issued."[15]

The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over

[14] New Negro Alliance *v.* Sanitary Grocery Co., 303 U. S. 552, 562.
[15] H. Rep. No. 669, 72nd Cong., 1st Sess., p. 8.

half a century. Hostility to "government by injunction" had become the rallying slogan of many and varied groups. Indeed, as early as 1914 Congress had responded to a widespread public demand that the Sherman Act be amended, and had passed the Clayton Act, itself designed to limit the jurisdiction of federal courts to issue injunctions in cases involving labor disputes. But the proponents of the Norris-LaGuardia Act felt that the jurisdictional limitations of the Clayton Act had been largely nullified by judicial decision. Thus, the Senate Judiciary Committee, reporting the Norris-LaGuardia Act, said: "That there have been abuses of judicial power in granting injunctions in labor disputes is hardly open to discussion. The use of the injunction in such disputes has been growing by leaps and bounds. . . . For example, approximately 300 were issued in connection with the railway shopmen's strike of 1922, . . ."[16] And on the same subject the House Judiciary Committee said: "These are the same character of acts which Congress in section 20 of the Clayton Act of October 15, 1914, sought to restrict from the operation of injunctions, but because of the interpretations placed by the courts on this section of the Clayton Act, the restrictions as contained therein have become more or less valueless to labor, and this section is intended by more specific language to overcome the qualifying effects of the decisions of the courts in this respect."[17] As an example of the judicial interpretation of the Clayton Act which the Committee said was "responsible in part for this agitation for further legislation," the Committee referred to the cases of *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association*, 274 U. S. 37. In these cases, the jurisdiction of the courts to grant injunctions had been upheld upon allegations and findings that the Sherman Anti-Trust Act had been violated.

Whether or not one agrees with the committees that the cited cases constituted an unduly restricted interpretation of the Clayton Act, one must agree that the committees and the Congress made abundantly clear their intention that what they regarded as the misinterpretation of the Clayton Act should not be repeated in the con-

[16] S. Rep. No. 163, 72nd Cong., 1st Sess., p. 8.
[17] H. Rep. No. 669, *supra*, pp. 7, 8.

struction of the Norris-LaGuardia Act. For us to hold, in the face of this legislation, that the federal courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress.[18] The Circuit Court of Appeals was in error; its judgment is reversed and the judgment of the District Court dismissing the bill for injunction is affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[18] For example, one of the prerequisites to any injunction under the Act is "that the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." Concerning this, the House Judiciary Committee said: "The last provision is considered desirable, because it often happens that complainants rush into a Federal court and obtain an injunction the enforcement of which requires the court to consid . and punish acts which are and ought to be, under our system of government, cognizable in the local tribunals. Our Federal courts already are congested with cases ordinarily cognizable in the local police courts, . . ." H. Rep. No. 669, *supra*, p. 9.